

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BONITA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014030697

ORDER DENYING DISTRICT'S  
MOTION TO DISMISS; DENYING  
STUDENT'S REQUEST FOR  
CONTINUANCE; AND RESETTING  
PROCEDURAL TIMELINES

Parent on Student's behalf filed a request for due process hearing only on March 17, 2014. On March 20, 2014, Student filed a unilateral request for continuance, which OAH denied without prejudice on March 26, 2014. On April 4, 2014, District filed a motion to dismiss the complaint on the ground that Parent had not participated in a mandatory resolution session. On April 7, 2014, Student timely filed a response to District's motion and renewed her request for a continuance.

APPLICABLE LAW

A local educational agency (LEA) is required to convene a meeting with the parents and the relevant members of the Individualized Education Program (IEP) team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3).) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3).) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the complaint. (34 C.F.R. § 300.510(b)(4).)

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

## DISCUSSION

District's motion to dismiss is based upon the assertion that Student's mother (Parent) did not participate in a mandatory resolution session, and that District did not waive the resolution. Student's opposition, and renewed request for continuance, is based on the unavailability of witnesses, including Parent, because of other non-related hearings.

A student's parent must participate in a resolution session before a due process hearing may be commenced, and OAH has discretion to dismiss the matter if the parent refuses to participate in a resolution session and the district provides appropriate documentation supporting its motion to dismiss.

Here, District has failed to establish that it made reasonable efforts to schedule a resolution session with Parent. Instead, in a declaration under penalty of perjury, District's Senior Director of Special Education stated that, upon receipt of the complaint, she mailed a letter to Parent setting a specific date for a resolution session. She asserts that Parent did not respond to the letter, but does not state that she made any further efforts to contact Parent to determine whether the date set by the District was amenable to Parent. She also asserts that she waited for Parent on the date set, but Parent did not come to the meeting. Finally, she asserts that Parent did not contact the District to reschedule the resolution session. No reasonable efforts, other than a single letter sent to Parent with a unilaterally set date, were made by the District to schedule a mutually agreeable time for the resolution session. This is compounded by the fact that Parent filed a request for continuance of the due process hearing one day before the District's letter, which was denied without prejudice, and yet the parties have, until now, been unable to successfully collaborate on mutually agreeable dates.

Because District has not documented that it has made reasonable efforts to schedule a resolution session and to obtain Parent's participation in the resolution session, District's motion to dismiss Student's complaint is denied. However, based on the above facts, and particularly the inability of the parties to agree on dates, the procedural timelines in this matter will be reset as of the date of this order, making Student's request for continuance moot.

The parties shall meet and confer within three business days of this order and shall hold a resolution session within fourteen business days of this order. If Parent fails to participate in a resolution session within fourteen days, District may renew its motion to dismiss for failure to participate in a resolution session, with a declaration referencing this order and appropriate supporting facts. The matter may be dismissed, absent a showing of good cause by Parent as to why she did not participate in a resolution session in compliance with this order.

## ORDER

1. District's motion to dismiss is denied without prejudice.
2. All previously set dates are vacated. The timelines for hearing established pursuant to Title 20 United States Code section 1415(f)(1)(B) shall recommence on the date of this order.
3. The parties shall meet and confer within three business days from the date of this order, and shall participate in a resolution session within fourteen business days from the date of this order.
4. If no resolution session take place, District may re-file its motion to dismiss supported by an appropriate declaration under penalty of perjury.
5. Student's request for continuance is denied as moot.

DATE: April 7, 2014

/s/

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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings